

ESTTA Tracking number: **ESTTA427793**

Filing date: **08/30/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Lifestation, Inc.
Granted to Date of previous extension	09/17/2011
Address	354 Neptune Avenue Brooklyn, NY 11235 UNITED STATES
Attorney information	Benjamin Natter Natter & Natter 501 Fifth Avenue Suite 808 New York, NY 10017 UNITED STATES S.NATTER@NATTER-NATTER.COM

Applicant Information

Application No	85114979	Publication date	07/19/2011
Opposition Filing Date	08/30/2011	Opposition Period Ends	09/17/2011
Applicant	John Reaves 2647 Broadway Suite 5W New York, NY 10025 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 2010/08/04 First Use In Commerce: 2010/08/04
All goods and services in the class are opposed, namely: Development of new technology for others in the field of home care or long-term care; Research and development of new products


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2987046	Application Date	05/24/2004
Registration Date	08/23/2005	Foreign Priority Date	NONE
Word Mark	AT HOME INDEPENDENCE		

Design Mark	AT HOME INDEPENDENCE
Description of Mark	NONE
Goods/Services	Class 045. First use: First Use: 2004/03/01 First Use In Commerce: 2004/03/01 MONITORING PERSONAL EMERGENCY COMMUNICATION ALARMS

U.S. Registration No.	3127332	Application Date	01/22/2004
Registration Date	08/08/2006	Foreign Priority Date	NONE
Word Mark	@ HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 045. First use: First Use: 2005/01/01 First Use In Commerce: 2005/01/01 MONITORING PERSONAL EMERGENCY COMMUNICATION ALARMS		

Attachments	76594217#TMSN.gif (1 page)(bytes) 76571437#TMSN.gif (1 page)(bytes) Notice of Opposition0830.pdf (5 pages)(20897 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	//Benjamin Natter//
Name	Benjamin Natter, authorized attorney
Date	08/30/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LifeStation Inc.

Opposer,

V.

John Reaves

Applicant.

[illegible]

OPPOSITION NO.:

To: Commissioner for Trademarks
P.O. Box 1451
Alexandria VA 22313-1451

Attn: Trademark Trial and Appeal Board

NOTICE OF OPPOSITION

Lifestation, Inc., a corporation organized under the laws of the State of New York, having an address at 354 Neptune Avenue, Brooklyn, NY 11235, by and through its attorneys, Natter & Natter, believes that it will be damaged by the registration of the mark INDEPENDENCE@HOME shown in application Ser. No. 85/114,979, published in the Official Gazette of July 19, 2011 and pursuant to Rule 2.101 et seq. of the Trademark Rules of Practice, hereby opposes same.

The grounds for opposition are as follows:

1. By application herein opposed, Applicant is seeking to obtain under the provisions of the Trademark Act as amended, registration upon the Principal Register of the mark INDEPENDENCE@HOME for "Development of new technology for others in the field of home care or long-term care; Research and development of new products" in International Class 042.

2. Applicant's mark was published for opposition on July 19, 2011. The time for the Opposer, Lifestation Inc., to file the Notice of Opposition was extended to September 17, 2011. This Notice of Opposition is timely filed.

3. Opposer, Lifestation Inc., provides home medical and emergency monitoring services. Opposer's mark, AT HOME INDEPENDENCE®, Reg. No. 2,987,046, is used in connection with monitoring personal communication alarms. Such mark engenders a strong commercial association in the mind of the public with the home medical monitoring and emergency services provided by Opposer.

4. Opposer has been using AT HOME INDEPENDENCE® at least as early as March of 2004, long prior to the August 24, 2010 filing date of the application herein opposed, Application Serial No. 85/114/979 for the mark INDEPENDENCE@HOME.

5. Opposer's AT HOME INDEPENDENCE® mark is registered in international class 042; the same international class in which Applicant seeks registration.

6. Opposer is also the owner of U.S. trademark Reg. No. 3,127,332 for the mark @HOME® in connection with monitoring personal communication alarms in class 042. Opposer's @HOME® mark was first used in commerce at least as early as January of 2005.

7. Opposer's distinctive AT HOME INDEPENDENCE® and @HOME® marks as associated with home monitoring services have obtained widespread public recognition and have acquired great value as an identification of the source of Opposer's services and said marks distinguish Opposer's services from those of others.

8. Applicant's mark, INDEPENDENCE@HOME, has appropriated Opposer's mark in its entirety.

9. Applicant's services namely, "Development of new technology for others in the field of home care or long-term care; Research and development of new products" comprise and/or are closely related to Opposer's services, both of which are associated with home care for disabled, elderly, and/or those in need of long term care or monitoring.

10. Applicant's registered marks, AT HOME INDEPENDENCE® and @HOME®, instill a sense of being able to live independently with the assurance that help will be readily available if needed. Included among perspective users of the Opposer's services are elderly people who might easily be confused as to the source of Applicant's services which would be rendered essentially under the same mark.

11. The use, promotion and registration of INDEPENDENCE@HOME by Applicant will cause the public to assume erroneously, and to be confused, misled, and/or deceived that Applicant's services originate from Opposer or are endorsed, licensed or sponsored by Opposer all to Opposer's irreparable damage.

12. Opposer has used both the @HOME® and AT HOME INDEPENDENCE® marks since well prior to the August 24, 2010 filing date of Application Serial No. 85/114,979 for the mark INDEPENDENCE@HOME.

13. The Registration of applicant's mark INDEPENDENCE@HOME together with the associated presumption of the right to use such mark will lead to the public's confusion, deception and erroneous assumption that Applicant's services originate from Opposer or are endorsed, licensed or sponsored by Opposer all to Opposer's irreparable damage.

14. By reason of the foregoing, Applicant's mark is likely to cause confusion with Opposer's mark and it is thus not registrable under Section 2(d) of the Trademark Act.

WHEREFORE, Opposer prays that this opposition be sustained and that the mark INDEPENDENCE@HOME of application Ser. No. 85/114,979 be refused registration.

Dated: New York, NY

Respectfully submitted,
NATTER & NATTER
Attorneys for Opposer
501 Fifth Avenue, Suite 808
New York NY 10017
Tel: (212) 840-8300
E-mail: b.natter@natter-natter.com

By /Benjamin Natter/
Benjamin Natter

CERTIFICATE OF MAILING

This will certify that on the 30th day of August, 2011, a true and correct copy of the within **NOTICE OF OPPOSITION** is being mailed, first class, postage prepaid to the Applicant as follows:

John Reaves
2647 Broadway, Suite 5w
New York, NY 10025

/Benjamin Natter/
Benjamin Natter
Attorney for Opposer